



IT IS ORDERED

Date Entered on Docket: February 14, 2019

**The Honorable Robert H Jacobvitz
United States Bankruptcy Judge**

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW MEXICO**

IN RE:

MARTIN ROY SMITH
SHEILA KIM SMITH
aka Sheila Jones

Debtors.

Case No. 13-18-10665-JA

**STIPULATED ORDER MODIFYING THE AUTOMATIC STAY
AND PROVIDING FOR THE ABANDONMENT OF PROPERTY**

This matter came before the Court on the Motion for Relief from Automatic Stay for the Abandonment of Property filed on October 18, 2018, (DOC 51) (the “Motion”) by Freedom Mortgage Corporation (“Freedom”), and the Debtors’ Response to Motion for Relief (the “Objection”) filed on November 8, 2018 (DOC 55). The Court, having reviewed the record, the Motion, the Objection and being otherwise sufficiently informed, FINDS:

a. On October 18, 2018, Freedom served the Motion and a notice of the Motion (the “Notice”) on Ronald E Holmes, Attorney for Debtor and Tiffany M. Cornejo (the “Trustee”) by use of the Court’s case management and electronic filing system for the transmission of notices,

as authorized by Fed.R.Civ.P. 5(b)(3) and NM LBR 9036-1, and on the Debtors, Martin Roy Smith and Sheila Kim Smith, by United States first class mail, in accordance with Bankruptcy Rules 7004 and 9014.

b. The Motion relates to the property located at 12904 Eastridge Drive NE Albuquerque, New Mexico 87112, more fully described as:

Lot numbered One (1) in Block numbered Twenty-one (21), of ROYAL HEIGHTS, UNIT NO. 4, Albuquerque New Mexico, as the same is shown and designated on the Plat of said Addition, filed in the Office of the County Clerk of Bernalillo County, New Mexico, on June 19, 1973, in Plat Book D5, folio 159.

including any improvements, fixtures, and attachments, such as, but not limited to, mobile homes (the “Property”). If there is a conflict between the legal description and the street address, the legal description shall control.

c. The Notice provided for an objection deadline of 21 days from the date of service of the Notice, to which three days was added pursuant to Bankruptcy Rule 9006(f);

d. The Notice was sufficient in form and content;

e. The objection deadline expired on November 11, 2018;

f. On November 8, 2018 the Debtors filed an Objection to the Motion;

g. As of December 19, 2018, no other party in interest has filed an objection to the Motion;

h. The Court being advised of both the Debtors’ and the Trustee’s consent to the relief requested herein and their approval as to the form of this Order; and the Court having considered Freedom’s Motion, now enters this Order modifying the automatic stay and providing for the abandonment of property in the event of default.

The parties stipulate and agree to the following terms:

1. The Debtor will cure the post-petition payment amounts due on Freedom's Note (the "Note") and Deed of Trust for October 1, 2018 through December 1, 2018, being three (3) payments of \$1,426.63 each, minus a Suspense of \$1,293.85 for a total post-petition payment arrearage amount through December 17, 2018 of \$2,986.04.

2. The first payment of \$497.69 is due by January 15, 2019, the second payment of \$497.67 is due by February 15, 2019, the third payment of \$497.67 is due by March 15, 2019, the fourth payment of \$497.67 is due by April 15, 2019, the fifth payment of \$497.67 is due by May 15, 2019, and the final payment of \$497.67 is due by June 15, 2019. Remittance of full and timely payment amounts under this payment schedule will cure and satisfy the current total post-petition payment arrearage amount of \$2,986.04 by June 15, 2019. These payments shall include the loan number and will be made in certified funds and will be delivered to:

Freedom Mortgage Corporation
ATTN:Payment Processing
10500 Kincaid Drive, Suite 300
Fishers, IN 46037

The Debtors shall continue to make their regular monthly mortgage payments in the current amount of \$1,426.63 as they come due (unless otherwise notified by Freedom), commencing with the January 1, 2018 payment and continuing thereafter.

3. In the event the Debtors fail to tender a payment as due and required by this Order, the movant may file a Notice of Default with the Court, which will be mailed to the Debtors and sent by electronic notification to Debtors' counsel. The Debtors will have fifteen (15) days from the filing of a Notice of Default to cure the default. **The Debtors will only receive two (2) such Notices.** If the Debtors fail to cure the default within fifteen (15) days from the filing of a Notice of Default, then upon the movant's filing of an Affidavit of Default, the automatic stay effectuated by Debtors' bankruptcy filing will be lifted as ordered herein, so

that Freedom may avail itself to the rights and remedies afforded under its Note and Mortgage, including but not limited to the right to foreclose against the property if available under State Law.

4. In the event that the Debtors default a third time, the movant may immediately proceed with the filing of its Affidavit of Default, thereby terminating the automatic stay and abandoning the subject property as ordered herein, so that Freedom may avail itself to the rights and remedies afforded under its Note and Mortgage, including but not limited to the right to foreclose against the property if available under State Law.

5. In the event the Debtors default and upon proper notice of the default to the Trustee, the Trustee shall immediately cease making payments to Freedom pursuant to the Debtors' Chapter 13 Plan, and future payments, if any, will only be made by the Trustee pursuant to an Amended Proof of Claim filed by Freedom for any unsecured deficiency balance.

IT IS, THEREFORE, THE ORDER OF THIS COURT:

That in accordance with the above agreed upon terms, upon the movant's filing of an Affidavit of Default and pursuant to Section 362(d) of Title 11 of the United States Code (the "Bankruptcy Code"), the automatic stay of Section 362(a) of the Bankruptcy Code is hereby lifted as to the real property identified in Freedom's Note and Mortgage. Said property is located at 12904 Eastridge Drive NE, Albuquerque, New Mexico 87112 (the "Property"), more fully and completely described as:

Lot numbered One (1) in Block numbered Twenty-one (21), of ROYAL HEIGHTS, UNIT NO. 4, Albuquerque New Mexico, as the same is shown and designated on the Plat of said Addition, filed in the Office of the County Clerk of Bernalillo County, New Mexico, on June 19, 1973, in Plat Book D5, folio 159.

including any improvements, fixtures, and attachments, such as, but not limited to, mobile homes. If there is a conflict between the legal description and the street address, the legal description shall control.

That upon default by the Debtors and proper notice of the default to the Trustee, the Property is hereby abandoned pursuant to Section 554 of the Bankruptcy Code, and Freedom may avail itself to the rights and remedies afforded under the Note and Mortgage, including but not limited to the right to foreclose against the Property if available under State Law.

That upon default by the Debtors and proper notice of the default to the Trustee, the Trustee shall cease making payments to Freedom pursuant to Debtors' Chapter 13 Plan, and any future payment and/or deficiency owed by the Debtors to Freedom after sale of the Property shall be set forth in an Amended Proof of Claim filed by Freedom and shall be subject to the Bankruptcy Code should this bankruptcy continue. If the Note and the obligation therein are fully satisfied and there remain any money-proceeds from the sale of the Property, then such monies will be paid to the Trustee for the benefit of the estate.

That upon the Debtors' default, the filing of the movant's Affidavit of Default, and the termination of the automatic stay and the abandonment of the subject property as provided herein, Fed. R. Bankr. P. 4001(a)(3) is not applicable and/or is waived and Freedom may immediately enforce and implement relief from the automatic stay and foreclose on the subject property if available under State Law.

This Stipulated Order (the applicable payment and default terms herein) shall remain effective, upon conversion to another chapter bankruptcy.

XXX END OF ORDER XXX

SUBMITTED BY:

ROSE L. BRAND & ASSOCIATES, P.C.

By:/s/Andrew P. Yarrington

Andrew Yarrington
Attorneys for Freedom
7430 Washington Street, NE
Albuquerque, NM 87109
Telephone: (505) 833-3036
Andrew.Yarrington@roselbrand.com

APPROVED BY:

By: Approved Via Email on February 12, 2019

Ronald E Holmes
Attorney for Debtors
320 Gold SW Suite 1111
Albuquerque, NM 87102
Telephone: 505-268-3999
rholmes@davismiles.com

By: Approved via Email on February 13, 2019

Tiffany M. Cornejo,
Chapter 13 Trustee
625 Silver Avenue SW Suite 350
Albuquerque, NM 87102-3111
Telephone: 505-243-1335

COPY TO:

Martin Roy Smith
Sheila Kim Smith,
Debtors
12904 Eastridge Dr NE
Albuquerque, NM 87112